IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 235 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI BALUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
MR PM VYAS for Appellant
MR AJ DESAI APP for Respondent

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/04/2004

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE J.R.VORA)

1. This Appeal is preferred by Rajubhai Balubhai Patel - original accused in Sessions Case No.44 of 1995 of the Court of Sessions, Valsad at Navsari, against the judgment and order dated 24th of December 1996, delivered by learned Additional Sessions Judge, Valsad at Navsari, convicting the appellant - accused for the charges proved against him under Section 302 of the IPC and sentencing him for the imprisonment of life and fine of Rs.500/- in default to undergo SI for one month.

2. The prosecution case as has been disclosed indicate that the accused - appellant is nephew while deceased Jayantibhai was his uncle. Father of Jayantibhai Sukhabhai deceased in this case has four sons. Eldest was father of the appellant - accused i.e. Balubhai Sukhabhai - complainant in this case and the youngest was the deceased Jayantibhai. All brothers were staying separately and Balubhai Sukhabhai and Jayantibhai, youngest brother of the complainant, were staying at village Aheru and other two brothers were staying one at Mumbai and the other at Village Pethan. Premiben PW-2 Exh. 9, mother of the complainant Balubhai Sukhabhai and the deceased Jayantibhai and grandmother of the accused - appellant was staying with Jayantibhai and she was maintained by deceased Jayantibhai. On the day of incident i.e. on 7.2.1995 at about in the afternoon, deceased Jayantibhai who had gone out, came to the house and asked for meal from Premiben his mother PW-2. While Premiben was preparing meal deceased Jayantibhai sat opposite the house, at that time, appellant - accused came and had beaten Jayantibhai and, therefore, deceased Jayantibhai made complaint to PW-2 Premiben that he was beaten by appellant - accused Rajubhai. Deceased Jayantibhai also complained before Premiben that while he was talking to Bhana Ravji, accused - appellant had beaten him. Premiben advised him to go to the Police and gave complaint. While he was going to the police station, he collided with one tree and had fallen down and at that time accused - appellant came and inflicted two blows by an axe on the head of deceased Jayantibhai. Premiben PW-2 tried to intervene but she was pushed away by the accused. Though she shouted but nobody came. Balubhai Sukhabhai, Complainant PW-1 was out of the house since morning on that day. When he returned to the village at about 6.45, he came to know through his wife that at about 6'O clock in the evening deceased Jayantibhai was giving abuses to their son accused appellant and accsued - appellant requested Jayantibhai not to abuse, but on the contrary deceased Jayantibhai continued uttering more abuses and, therefore, accused

appellant was provoked and gave one blow of an axe on the head of the deceased. Complainant Balubhai went to the backyard of the house and found that deceased Jayantibhai was lying in backyard and was smeared with blood in unconscious condition. Therefore, he was taken to Civil Hospital at Navsari where he was treated by PW-6 Dr. Ushaben Ajaykumar Sharma and since Jayantibhai was serious, he was shifted to Civil Hospital, Surat, there he died. Balubhai father of the appellant accused filed complaint before Navsari Police Station at 21.45 hours before PW-7 Ratanbhai Mahadubhai Dhangar who registered the same and entrusted the investigation to the Senior Police Sub-Inspector Babubhai Velijibhai Ramani PW-8, who investigated the offence and submitted the charge sheet against the appellant - accused. The case was ultimately committed to the Court of Sessions. Additional Sessions Judge, Valsad at Navsari framed charge against the accused appellant vide Exh.2 on 20.8.1996 to which he pleaded not guilty and, therefore, prosecution examined as many as 8 witnesses to prove its case and produced other documentary evidence on record.

3. Out of these 8 witnesses, PW-1 Exh.7 is complainant Balubhai Sukhabhai, father of the accused but he has not supported the prosecution case nor the complaint. The FIR given by him is produced at Exh. 8.

4. PW-2 Premiben Exh.9 deposed that deceased Jayantibhai was staying with her and was maintaining her. On the day of the incident deceased returned to the house at about 4.30 and asked for the meal. While she was preparing meal for Jayantibhai, deceased came to her running and stated that the appellant - accused had beaten him for no reason while he was taking with one Bhanabhai Ravji. She advised him to go to the Police and gave complaint. While he was going to the police, he dashed with one tree and had fallen down. At that very juncture accused - appellant came and inflicted two blows of an axe on the head of the deceased Jayantibhai. She tried to intervene but she was pushed away by the appellant - accused. She shouted that Jayantibhai had been murdered but nobody came. She sat near deceased Jayantibhai with clothes because he was profusely bleeding. In her cross-examination, an attempt has been made that her eye sight was weak and her hearing was impaired due to advanced age. She denied that when the incident occurred it was dark and she could not see properly. It was also alleged that there was a family dispute about trees owned by the family and from the amount realized from the trees, the complainant had constructed a house for the accused appellant and PW-2,

but she denied this allegation. On the contrary, she has stated in her deposition in cross that the accused appellant was instigated by his father.

5. Girishchandra Dinkarray Desai - PW-3 is examined at Exh. 19 as a panch of panchnama Exh. 20 by which the blood stained shirt of the accused was seized by the Police but PW-3 neither supported the panchnama nor the prosecution case. Dalubhai Rameshbhai Exh. 21 is examined as PW-4 as second panch of panchnama at Exh.20 but he has also turned hostile to the prosecution case.

6. PW-5 Dr. Mohammad Iliyas Isarmohamad Shaikh is examined at Exh. 22 who performed postmortem of the deceased being Medical Officer of Surat Civil Hospital because from Navsari for further treatment deceased was shifted to Civil Hospital, there he died. PW-5 Dr. Shaikh received dead body at 4.00 p.m. on 8.2.1995. He started postmortem at 4.05 p.m. and completed at 5.30 p.m. on the same day. According to him, the deceased had following external injuries.

(1) Lacerated wound present over right parietal region longitudinal, irregular in shape, 5 cms x 1 cm x bone deep margins abraded and irregular, with palpable fracture of underedging bone 10 cms above right eye brow, wound with five black stitches.

(2) Lacerated wound on left parietal region, 2.5 x 0.5 cm x stain deep x 9 cms above the left ear.

(3) Abrasion on left parietal region 0.5 x 0.5 cm x 8 cm above the left ear red in colour.

(4) Surgical stitched wound on left parietal region with six stitches. 9 cms in length with drainage tube.

(5) Surgical stitched wound on right frontal region with 5 black stitches 7 cms in length with drainage tube.

(6) Contusion over posterior aspect of left fore arm and back of hand 10 x 6 cms.

Due to external injuries there was haemorrhage in the brain and so many fractures of the skull. According to

the opinion of PW-5 due to lacerated wounds in brain and fractures of the skull, the deceased had died. He stated that the injuries except injury No.6 were sufficient in ordinary course of nature to cause death. Muddamal article No.6 axe was shown to him and he stated that the injuries were possible by muddamal article No.6. He has been cross-examined about the time of the death, but nothing is brought about to discard the evidence of PW-5.

7. Dr. Ushaben Ajaykumar Sharma Exh.23 is examined as Prosecution Witness No.6 by the prosecution who was Medical Officer at the relevant time at Navsari Hospital and on 7.2.1995 at about 9.00 p.m. injured Jayantibhai Sukhabhai Patel was brought to her for treatment and in history she stated that he was beaten by an axe. PW-6 found following injuries on the head of injured Jayantibhai. She gave certificate in this respect which is at Exh.12.

"H/o Assaulted by Axe. Today at 6 p.m.
occipital. Incised wound left temporal occipital region 5 to 6 cms about to left ear. Vertical 5 cms x 1 cm x braindeep. Hematoma with rain matter protruding from wound. Bleeding from ear present. X-ray shows - multiple fracture on skull."

She found skull fracture and at 10'O clock the injured Jayantibhai was shifted to Hospital at Surat. She has been cross-examined but nothing is brought about to disbelieve this witness.

8. Ratanbhai Mahadubhai Dhangar, PW-7 is examined at Exh. 24 who was Police Station Officer of Jalalpor Police Station at the relevant time when Balubhai Sukhabhai came to the Police Station and offer his complaint which was recorded and registered by this witness and the investigation was handed over to Senior PSI.

9. Babubhai Veljibhai Ramani is examined at Exh. 25 as Prosecution Witness No.8 who investigated the offence.

10. After recording the evidence and recording the statement of the accused under Section 313 of the Criminal Procedure Code, in which the defence of the accused - appellant is of total denial, learned Additional Sessions Judge heard both the parties and came to the above conclusion to convict the appellant accused as above said and hence this Appeal.

11. Learned Advocate Mr.P.M. Vyas for the appellant - accused and learned APP Mr. A.J. Desai for the respondent State were heard at length. Learned Advocate Mr. Vyas urged that the prosecution failed to prove its case beyond reasonable doubt because there are contradictions in the evidence. The case is of sole eye witness i.e. PW-2 Premiben whose physical and mental condition was such that she could not have observed the incident as she has stated. None of the other witnesses except Doctors and Police Witnesses, have supported the prosecution case. It is stated that PW-2 Premiben is an interested witness, with her the deceased was staying and therefore her evidence should be carefully examined and when there is no corroboration found from other evidence, her evidence, being of sole eye witness, may not be believed. On the other hand, learned APP Mr. Desai has vehemently urged that there is an eye witness of an incident and she is grandmother of the appellant accused. She has stated the incident in natural manner. She is corroborated by the medical evidence which proves that the death of the deceased Jayantibhai was culpable homicide. She is also corroborated by other evidence that according to Forensic Science Laboratory opinion, the blood found from the clothes of the deceased, the blood from the scene of offence, blood found from the muddamal article and from the clothes of the accused is of the same group i.e. 'A' Group. Therefore it is urged that the Appeal be dismissed.

12. On going carefully through the record and proceedings of the case and evidence recorded by the learned Trail Judge, with reference to the contentions raised, it clearly appears that though the case hinges on sole eye witness PW-2 Premiben, the prosecution was able to prove the case against the appellant - accused beyond reasonable doubt for culpable homicide amounting to murder. Having gone through the evidence of PW-2 Premiben, it clearly appears that she cannot be said to be an interested witness, because the deceased was her son and the accused - appellant is her grandson. It clearly appears that the incident has occurred on the backyard of the house of Jayantibhai and, therefore, PW-2 Premiben must have noticed the incident from the near distance. In her cross-examination she has denied the allegation that her eye sight was not proper. She stated that even without spectacle she can move and see. On going through the cross-examination, it clearly appears that nothing is brought about by the defence to dislodge the evidence of PW-2 Premiben the mother of the deceased and grandmother of the accused - appellant. The manner in which she has stated before the Court is simple and

natural and flaw less. There is no reason that only because even if there was family dispute about trees, PW-2 would involve her own grandson in this heinous crime for such dispute and, therefore, this is the case wherein conviction awarded by the Trial Judge on evidence of sole eye witness PW-2 in no manner is subjected to interference by this Court in this Appeal. PW-2 is further corroborated by the medical evidence as well as the evidence of Forensic Science Laboratory analysis. Though learned Advocate for the appellant Mr. P.M. Vyas attempted before this Court that if at all the accused appellant has committed an offence, then in the circumstance the same is not culpable homicide amounting to murder but the same is lesser offence. We are not at all impressed by this argument that only because PW-1 Complainant in his complaint stated that the deceased was abusing appellant - accused Rajubhai, Rajubhai inflicted blows and, therefore, this was the case of grave and sudden provocation. The blows are inflicted by a weapon like an axe, the act of the appellant - accused is undoubtedly intentional because the blows is on vital part of the body and also the blows are inflicted by lethal weapon like an axe. The medical evidence discloses so many fractures of the skull and lacerations in the brain which suggest the force behind the blows inflicted by the accused appellant. Even if for the sake of the argument it is believed that the deceased uttered abuses, then also, in the circumstances of the case, it cannot be said that this was a circumstance by which the accused - appellant was so provoked as to inflict cruel and fatal blows as has been found from medical evidence and, therefore, we are not inclined to accept that the accused - appellant has committed lesser offence than the culpable homicide amounting to murder. For the reasons above, we have no other alternative except to dismiss this Appeal.

13. In the result, this Appeal stands dismissed. The appellant - accused was released on bail by order dated 12.01.2004 passed in Criminal Misc. Application No. 10338 of 2003 till final disposal of this Appeal by this Division Bench. Therefore, the bail bond of the accused - appellant stands cancelled and he is directed to surrender to the Jail Authority for serving of the remaining sentence within 15 days from today.

(B.J. Shethna, J.)

(J.R. Vora, J.)

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